

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

JESUS A. ARREOLA,

Respondent-Appellant.

UNPUBLISHED

February 1, 2007

No. 265904

Wayne Circuit Court

Family Division

LC No. 04-436486-DL

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Following a bench trial, respondent was adjudicated responsible for receiving or concealing a stolen motor vehicle, MCL 750.535(7); carrying a concealed weapon, MCL 750.227; and violating Detroit's curfew ordinance, Detroit City Code 33-3-1. Respondent was sentenced to probation, of unspecified length. Respondent appeals by delayed leave granted. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent's sole contention on appeal is that the evidence was insufficient to support his adjudications with respect to the charges of receiving or concealing a stolen motor vehicle and carrying a concealed weapon. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). Circumstantial evidence and reasonable inferences drawn from the evidence may be sufficient to prove the elements of a crime. *Wilkens, supra* at 738.

MCL 750.535(7), provides, in pertinent part: "A person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing that the motor vehicle is stolen, embezzled, or converted." For an item to be considered stolen, it need only be taken without permission or right. *People v Pratt*, 254 Mich App 425, 428; 656 NW2d 866 (2002). The crime of receiving or concealing stolen property requires knowledge on the part of the defendant that the property was stolen; however, the offense is not a specific intent crime.

People v Ainsworth, 197 Mich App 321, 324-325; 495 NW2d 177 (1992). Knowledge concerning the status of a stolen item encompasses not only actual knowledge, but constructive knowledge, through notice of facts and circumstances from which guilty knowledge may fairly be inferred. *People v Wilbert*, 105 Mich App 631, 637; 307 NW2d 388 (1981).

Marshall Truitt, owner of the car in question, parked his car in a lot across the street from a bar, locked it, and carried his keys into the bar with him. Upon exiting the bar approximately 45 minutes to one and a half hours later, Truitt realized that his car was missing. Approximately 15 to 30 minutes later, officers made a traffic stop of a car, later determined to be Truitt's, that had run a red light. Inside the car were the 14-year-old respondent and four other youths. Respondent sat in the back seat, behind the passenger. Officers suspected the car was stolen, given that the rear window was smashed, the steering wheel column and ignition were damaged, and there was a screwdriver next to the driver on the driver's seat. On these facts, clearly respondent had actual, or at the very least constructive, knowledge, that the vehicle was stolen.

In addition to a finding of knowledge, there must be a finding that respondent bought, received, possessed, concealed, or aided in the concealment of the vehicle. MCL 750.535(7). Not only do the facts give rise to the inference that respondent was aware that the car was stolen, but also that he participated in stealing it. A maximum of one hour and 45 minutes elapsed from the time Truitt's car was stolen to the time respondent was found in the car. This short time span makes it likely that the individuals found in the car were the ones responsible for stealing it.¹ Additionally, evidence was presented indicating that the occupants of the car were affiliated with a gang, given that there was gang graffiti written inside the car, and several of the occupants wore blue clothing and blue handkerchiefs, blue being the color of a local gang.

Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the charged offense. *Wilkens, supra* at 738. We find, given the totality of the circumstances here, that there was sufficient evidence for the trial court to find that respondent received, concealed or possessed a stolen vehicle with the knowledge that it was stolen. The trial court did not err in its adjudication of this charge.

Next, to establish the offense of carrying a weapon in a vehicle, MCL 750.227, a prosecutor must show: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of its presence, and (3) that the defendant was carrying the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). To "carry" is to transport, bear, or convey. *People v Green*, 260 Mich App 392, 403-404; 677 NW2d 363 (2004), rev'd in part on other grounds *People v Anstey*, 476 Mich 436; 719 NW2d 579 (2006).

The prosecutor presented sufficient evidence from which the trial court could infer that respondent had knowledge of the gun and was "carrying" the gun. A .25 caliber loaded handgun was found wedged in the middle of the backseat between the seat and the backrest, and a .25

¹ *People v Mosley*, 107 Mich App 393, 397; 309 NW2d 569 (1981) (noting that possession of recently stolen property permits an inference that the possessor committed a theft).

caliber spent shell casing on the floor behind the driver's seat. Respondent was sitting in the back seat of the stolen vehicle on the passenger side, with both the gun and the shell casing clearly in close proximity. One relevant factor in the determination that a defendant was "carrying" a weapon is "the accessibility or proximity of the weapon to the person of the defendant." *Green, supra* at 405.

The trial court relied on a combination of factors: the car's rear window was smashed, the steering column and ignition were damaged, a screwdriver lay on the driver's seat, most of the car's occupants wore what appeared to be gang affiliated clothing, and gang graffiti was sprayed in the car. We agree that these factors add up to a reasonable inference that respondent knew that the gun was in the car and was "carrying" the gun.² The trial court did not err with respect to the carrying a concealed weapon adjudication.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper

² *People v Stone*, 100 Mich App 24, 27-28; 298 NW2d 607 (1980) (the carrying of a gun in a vehicle can be inferred from the defendant's close proximity to the gun, or the fact that the defendant and others were engaged in a common, unlawful enterprise, and the gun was being carried in furtherance thereof).